

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANSAR EL MUHAMMAD,

Plaintiff,

v.

KOURTNEE AMARAL, et al.,

Defendants.

No. 2:20-cv-00069-KJM-CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this federal civil rights action filed pursuant to 42 U.S.C. § 1983. On November 16, 2020, the previously assigned magistrate judge issued Findings and Recommendations that this case be dismissed without prejudice as duplicative of Muhammad v. Orr, Case No. 2:19-cv-1289-KJM-CKD (E.D. Cal.).¹ Before those Findings and Recommendations could be reviewed by the district court judge, this case was reassigned after it was determined that it involved “similar questions of fact and the same question of law” as the Orr case. ECF No. 35 at 1 (citing Local Rule 123(a)(3)). Due to this reassignment, it is necessary to vacate the previously issued Findings and Recommendations.

This case is proceeding on plaintiff’s amended complaint filed on August 10, 2020 alleging that defendant Amaral violated his Eighth Amendment right to adequate medical care by

¹ Hereinafter referred to as the “Orr case.”

1 failing to treat his broken hand in August 2018 while plaintiff was an inmate at Mule Creek State
2 Prison. ECF No. 15. Plaintiff raised these same allegations against defendant Amaral in the Orr
3 case. See ECF No. 16 in Muhammad v. Orr, Case No. 2:19-cv-1289-KJM-CKD (screening
4 order). Because the Orr case was filed first, it appears to the court that the complaint in this civil
5 action is entirely duplicative and should therefore be dismissed without prejudice.

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. The Findings and Recommendations issued on November 16, 2020 (ECF No. 34) are
8 hereby vacated.
9 2. The December 14, 2020 minute order scheduling a settlement conference in this case
10 (ECF No. 36) is also vacated as premature.

11 IT IS FURTHER RECOMMENDED that this matter be dismissed without prejudice as
12 duplicative. See Fed. R. Civ. P. 41(b).

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
18 objections shall be served and filed within fourteen days after service of the objections. The
19 parties are advised that failure to file objections within the specified time may waive the right to
20 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: December 21, 2020

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23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE

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